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8 *Attorneys for Complainant*

9
10 **BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**
11

12
13 In the Matter of the Accusation Against:

Case No. **2010-629**

14 **ERICK TORRES**
11055 East Dragoon Avenue
15 Mesa, AZ 85208

ACCUSATION

16 **Registered Nurse License No. RN 598590**

17 Respondent.
18

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
23 of Consumer Affairs.

24 **License History**

25 2. On or about April 24, 2002, the Board of Registered Nursing issued Registered Nurse
26 License Number RN 598590 to Erick Torres (Respondent). The license expired on June 30,
27 2007, and has not been renewed.

28 ///

JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code), unless otherwise indicated.

4. Code section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of the Nursing Practice Act.

5. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

6. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

7. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

COST RECOVERY

8. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

1 CAUSE FOR DISCIPLINE

2 (Out-of-State Discipline)

3 9. Respondent is subject to disciplinary action under Code section 2761, subdivision
4 (a)(4), on the grounds of unprofessional conduct, in that Respondent's Registered Nurse License
5 was disciplined by the Arizona State Board of Nursing (Arizona Board). In the action titled, *In*
6 *the Matter of Registered Nurse License No. RN 133818 Issued to: Erick Torres, Respondent.*
7 Effective December 23, 2009, pursuant to Consent Agreement and Order No. 0902093,
8 Respondent's Registered Nurse License No. RN 133818 was automatically suspended if he did
9 not pay a civil penalty within 60 days of the effective date of the Consent Agreement and Order.
10 If the civil penalty was not timely paid, then Respondent's license was suspended until the
11 penalty was paid in full or revoked for five years if not paid within one year from the effective
12 date of the Consent Agreement and Order. A copy of the Arizona Board's Consent Agreement
13 and Order No. 0902093, Findings of Fact, and Conclusions of Law, is attached hereto, marked
14 Exhibit A, and incorporated herein.

15 10. The underlying circumstances of the discipline are that the Arizona Board received
16 the following information:

17 a. On April 21, 2008, in Gilbert, Arizona, Respondent was convicted on his plea of
18 guilty of driving with an open container of beer in a vehicle, a misdemeanor.

19 b. On or about April 10, 2009, the Arizona Board requested Respondent to completely
20 fill out an Investigative Questionnaire regarding his February 2009, arrest and subsequent
21 conviction. On or about April 15, 2009 Respondent submitted the form to the Arizona Board.
22 However, Respondent failed to completely respond to the questionnaire, in that he failed to
23 disclose his 2008 open container conviction.

24 c. On May 14, 2009, in Gilbert, Arizona, Respondent was convicted on his plea of
25 guilty of extreme DUI with a blood alcohol concentration (BAC) of .15 or more, a misdemeanor.

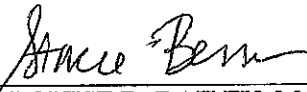
26 PRAYER

27 **WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged,
28 and that following the hearing, the Board of Registered Nursing issue a decision:

- 1 1. Revoking or suspending Registered Nurse License Number RN 598590 issued to
2 Erick Torres;
3 2. Ordering Erick Torres to pay the Board the reasonable costs of the investigation and
4 enforcement of this case, pursuant to Code section 125.3; and,
5 3. Taking such other and further action as deemed necessary and proper.

6 DATED:

6/10/10

for 
LOUISE R. BAILEY, M.Ed., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SA2010101018/10563384

EXHIBIT A
CONSENT DECREE AND ORDER
[Arizona Board of Registered Nursing]

Janice K. Brewer
Governor



Joey Ridenour
Executive Director

Arizona State Board of Nursing

4747 North 7th Street, Suite 200
Phoenix AZ 85014-3655
Phone (602) 771-7800 Fax (602) 771-7888
E-Mail: arizona@azbn.gov
Home Page: <http://www.azbn.gov>

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF ARIZONA

COUNTY OF MARICOPA

I, Joey Ridenour, Executive Director for the Arizona State Board of Nursing, County of Maricopa, State of Arizona, do hereby certify that I am the officer having the legal custody for the records hereto attached in the office of the Arizona State Board of Nursing, County of Maricopa, State of Arizona, a public office of said State. The attached copies are true copies of the records on **ERICK TORRES**. Personnel of the Arizona State Board of Nursing prepared the records during the ordinary course of business.

Witness my hand and the seal of the Arizona State Board of Nursing at 4747 N. 7th Street, Suite 200, Phoenix, Arizona 85014-3655 on December 28, 2009.

SEAL

Joey Ridenour R.N. M.N. F.A.A.N.

Joey Ridenour, R.N., M.N., F.A.A.N.
Executive Director

ERICK TORRES,
RESPONDENT

ARIZONA DEPARTMENT OF CORRECTIONS
FINDINGS OF FACT AND CONCLUSIONS
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1. Respondent holds Board issued registered nurse license number RN133818.
2. On or about February 13, 2009, Respondent reported to the Board that he was cited for driving under the influence ("DUI") on February 7, 2009, in Gilbert, Arizona. Based upon Respondent's disclosure, the Board conducted an investigation.
3. On or about February 28, 2008, according to Gilbert Police Department report number 08-000003616, police responded to a call from a witness who reported a possible DUI driver and provided police with the vehicle's license plate number. Police subsequently responded to the address associated with the license plate, and encountered Respondent. Police smelled the odor of an alcoholic beverage on Respondent's breath. Police looked into

Respondent's vehicle and noticed an open beer sitting in the driver's seat. Police arrested Respondent for possessing an open container in a passenger vehicle.

4. On or about April 21, 2008, Respondent was convicted of open container in a vehicle, a misdemeanor, in the Gilbert Municipal Court in Gilbert, Arizona.

5. On or about February 7, 2009, according to Gilbert Police Department report number 09-000002591, a witness reported a possible DUI driver. An officer saw the listed vehicle, which was being driven by Respondent, and initiated a traffic stop. A breath test revealed Respondent's blood alcohol concentration ("BAC") was .206. Police found two empty beer bottles in Respondent's vehicle. Police arrested Respondent and cited him into Gilbert Municipal Court for DUI, DUI with a BAC of .08 or more, extreme DUI with a BAC of .15 or more, and extreme DUI with a BAC of .20 or more. Blood tests revealed Respondent's BAC was .214 and .210.

6. On or about May 14, 2009, in case number 2009 TR 0003032-DU, Respondent was convicted, pursuant to a guilty plea, of extreme DUI with a BAC of .15 or more, a misdemeanor in the Gilbert Municipal Court in Gilbert, Arizona.

7. On or about April 10, 2009, Board Staff mailed Respondent an Investigative Questionnaire regarding his February 2009 DUI, and an Arrest and Conviction Questionnaire with instructions to provide a written explanation and specific court and police records regarding each of his arrests, citations or charges, by April 24, 2009. Respondent was reminded that failure to cooperate with the Board by not furnishing in writing a full and complete explanation covering the matter is unprofessional conduct and grounds for disciplinary action.

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8. On or about April 15, 2009, the Board received Respondent's incomplete response to the questionnaires. Respondent failed to disclose his 2008 open container arrest and conviction.

CONCLUSIONS OF LAW

Pursuant to A.R.S. §§ 32-1606, 32-1646 32-1663 and 32-1664, the Board has subject matter and personal jurisdiction in this matter.

The conduct and circumstances described in the paragraphs above constitute sufficient cause pursuant to A.R.S. §32-1663 (D) as defined in A.R.S. § 32-1601 (16) (d), and (j) (amended 2002); A.A.C. R4-19-403(B)(17) (adopted effective November 13, 2005); and A.A.C. R4-19-403 (17) and (25)(a) (adopted effective February 2, 2009) to impose discipline on the registered nurse license number RN133818. However, in lieu of a formal hearing on these issues, Respondent agrees to the issuance of the following Order and irrevocably waives all rights to a hearing, rehearing, appeal, or judicial review relating to the Findings of Fact, Conclusions of Law, and Order.

Respondent admits the Board's Findings of Fact and Conclusions of Law.

Respondent understands that all investigative materials prepared or received by the Board concerning these violations and all notices and pleadings relating thereto may be retained in the Board's file concerning this matter.

Respondent understands that the Findings of Fact, Conclusions of Law and Order are conclusive evidence of a prior violation of the Nurse Practice Act and may be used for purposes of determining sanctions in any future disciplinary matter.

Respondent understands that this Consent Agreement is effective upon its acceptance by the Board and by Respondent as evidenced by the respective signatures thereto. Respondent's

signature obtained via facsimile shall have the same effect as an original signature. Once signed by the Respondent, the agreement cannot be withdrawn without the Board's approval or by stipulation between the Respondent and the Board's designee. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent Agreement is signed on different dates, the later date is the effective date.

Erick Torres

Erick Torres, Respondent

Dated: 12/23/09

ARIZONA STATE BOARD OF NURSING

Joey Ridenour R.N. M.N. F.A.A.N.

Joey Ridenour, R.N., M.N., F.A.A.N.
Executive Director

Dated: November 19, 2009

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ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the parties agree to the provisions and penalties imposed as follows:

A. Respondent's consent to the terms and conditions of the Order and waiver of public hearing are accepted.

B. Respondent shall be assessed a Civil Penalty in the amount of \$250.00.

(1) Respondent shall pay the Civil Penalty, in full, via cash, cashier's check or money order within sixty (60) days from the effective date of the Consent Agreement and Order.

(2) If Respondent fails to pay the Civil Penalty, in the manner stated in paragraph B(1), above, Respondent's registered nursing license shall be AUTOMATICALLY

SUSPENDED. The suspension of the registered nursing license shall continue until one of the following events occurs:

(a) the Civil Penalty is paid in full:

(b) one calendar year from the due date stated in paragraph B.(1) has expired. If Respondent fails to pay the Civil Penalty, in full, within one year from the due date stated in paragraph B. (1), above, Respondent's registered nursing license shall be AUTOMATICALLY REVOKED for a period of five (5) years, pursuant to A.R.S. § 32-1664(N).

Respondent agrees to waive any hearing, rehearing and all appeal rights or remedies regarding any suspension or revocation imposed pursuant to this paragraph.

C. This Order becomes effective upon the Board and Respondent's acceptance of the Consent Agreement. The effective date of this Order is the date the Consent Agreement is signed by the Board and by Respondent. If the Consent Agreement is signed on different dates, the later date is the effective date.

D. Respondent shall obey all federal, state and local laws, and all laws/rules governing the practice of nursing in this state. Offenses such as driving under the influence may subject Respondent to further disciplinary action, however, commission of minor civil moving traffic violations are excluded.

SEAL

ARIZONA STATE BOARD OF NURSING

Joey Ridenour R.N. M.N. F.A.A.N.

Joey Ridenour, R.N., M.N., F.A.A.N.
Executive Director

Dated: November 19, 2009

COPY mailed this 4th day December, 2009, by First Class Mail to:

Erick Torres
4765 S Joshua Tree Lane
Gilbert, AZ 85297

By: Esther Garcia

CALIFORNIA
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